

OBJECTION
AGAINST THE BLACKFOOT TRAVEL PLAN
RECORD OF DECISION (ROD) AND FINAL ENVIRONMENTAL IMPACT
STATEMENT (FEIS) FOR THE BLACKFOOT TRAVEL PLAN IN THE LINCOLN
RANGER DISTRICT OF THE HELENA NATIONAL FOREST

To: Objection Reviewing Officer
U.S. Forest Service, Region 1
P.O. BOX 7669
MISSOULA, MT 59807

Objectors:

Lead Objector: Mike Garrity, Director, Alliance for the Wild Rockies, PO Box 505, Helena, MT 59624; phone [406-459-5936](tel:406-459-5936).

Sara Jane Johnson, Director, Native Ecosystems Council, PO Box 125, Willow Creek, MT 59760; phone [406-285-3611](tel:406-285-3611).

Notice of Objection

On March 28, 2014, a legal notice was published in the Helena Independent Record stating that Helena National Forest Supervisor signed a Draft Record of Decision for the Blackfoot Travel Plan on the Lincoln Ranger District of the Helena National Forest. This project is described and evaluated in a Final Environmental Impact Statement (FEIS). This Project is being implemented under the Healthy Forest Restoration Act of 2003 (Title 1, Section 102(a)(4)). This Project is being objected to pursuant to 36 CFR Part 218 Subpart A by Alliance for the Wild Rockies and Native Ecosystems Council. Appellants Alliance for the Wild Rockies (here after "AWR") Native Ecosystems Council (hereafter "NEC") are both nonprofit Montana-based organizations headquartered in Helena and Three Forks. Both groups have been active in public lands management for at least 20 years. Their focus is on ensuring the long-term viability of native wildlife and fish species in the Northern Rockies by application of the current best science on public forest lands and waterways.

AWR objects to several aspects of the Draft ROD and proposed alternative #4 in the FEIS. The issues raised in this objection were addressed in our comments on the Blackfoot Travel Plan DEIS or scoping comments or are based on new information contained in the draft ROD and FEIS.

Objectors enjoy various activities on public forest lands in the Northern Rockies, including on the Lincoln Ranger District of the Helena National Forest and within the

Blackfoot Travel Plan Project Area. Objectors plan to continue these activities into the future within the Project Area, including hiking, bird watching, camping, and photography. Objectors are concerned about the continued viability and preservation of vulnerable fish and wildlife species on the Helena National Forest due to logging and road use activities that increase sedimentation into bull trout streams, and activities that continue to erode grizzly bear and lynx habitat across the landscape. The
Suggested Remedies

Due to the violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Administrative Procedures Act (APA), the Endangered Species Act (ESA), the Clean Water Act (CWA) and the Healthy Forests Restoration Act (HFRA), objectors request that the Forest Service withdraw the draft ROD and FEIS, consult with the Fish and Wildlife Service on the Impact of this project on grizzly bears, wolverines, bull trout and lynx and come up with a new alternative that addresses the issues raised in our objection and are based on the current best science. In addition, the Forest Service needs to consult on PACFISH/INFISH in bull trout critical habitat and on the Northern Rockies Lynx Management Direction in lynx critical habitat.

Signed for Objectors this__12th__day of May, 2014

Michael Garrity
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Narrative Description of Objectors Concerns Regarding the Blackfoot Travel Plan Issues/ Suggested Remedies

Appellants have identified the agency's failure to comply with NFMA, NEPA, APA, THE CLEAN WATER ACT AND THE ENDANGERED SPECIES ACT Due to effects on Native Fish Species and Habitat.

The Blackfoot Travel Plan Project Draft ROD and FEIS analyses of impacts on water quality are inadequate.

The Blackfoot Travel Plan fails to facilitate recovery of bull trout and maintains degraded conditions in bull trout critical habitat in violation of the Endangered Species Act.

The Forest Service and U.S. Fish and Wildlife Service: 1) failed to take a hard look at Project impacts on bull trout and westslope cutthroat trout, 2) failed to ensure bull trout and westslope cutthroat trout survival and recovery, and 3) failed to ensure a viable population of bull trout and westslope cutthroat trout (WCT), in violation of the Helena National Forest Plan, ESA, NFMA and NEPA.

Bull trout are listed as a threatened species under the ESA.

WCT is designated as a Sensitive Species by the U.S. Forest Service (USFS), and a Special Status Species by the Bureau of Land Management (BLM).

The Endangered Species Act requires that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. The terms “conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

Agencies did not analyze or disclose current condition of the INFISH Riparian Management Objectives (Large Woody Debris, Bank Stability, Lower Bank Angle and Width/Depth Ratio); those that are disclosed (Temp, Pools, Sediment) are in abysmal shape. Nor did agencies disclose how this Project would the necessary improvements to meet PACCFISH/INFISH Objectives.

The Ninth Circuit has also held that the agency must make clear when information is lacking, and “[g]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998); *Montana Wilderness Association v. McAllister*, 666 F.3d 549 (9th Cir. 2011).

The Ninth Circuit has also made it clear that a cursory cumulative impact analysis does not pass muster under NEPA. *Lands Council*, 395 F.3d at 1026-27; *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 868 (9th Cir. 2005); *Neighbors of Cuddy Mountain v. USFS*, 137 F.3d 1372, 1379-80 (9th Cir. 1998).

The agencies failed to use the best available science in violation of the ESA and NEPA. The Forest Service has very limited information on the status of the highly imperiled bull trout population in the Project area. The limited information that the Forest Service does have in making its habitat determinations is not current and is unreliable. The streams in the Blackfoot Travel Plan project area mostly functioning at risk or functioning at unacceptable risk. This project maintains degraded conditions for subpopulations size, growth and survival, life history diversity and isolation, persistence and genetic integrity, substrate embeddedness, large woody debris, pool frequency and quality, large pools, refugia, width to depth ratio, bank stability, change in peak/base flows, drainage network increase, road density and location, disturbance history, temperature, and integration of species and habitat concerns. This project further degrades sediment levels.

The Forest Service has failed to take a hard look at Project effects on bull trout and WCT, has failed to use the best available science, and has failed to base its determinations on readily-available substantial supporting evidence, in violation of the APA, ESA and NEPA.

The agencies are not meeting Helena Forest Plan requirements for viability, in violation of NFMA.

“It is anticipated that this project would not result in a “Likely to Adversely Affect” determination for bull trout consultation. No determination is made in the FEIS about whether or not bull trout, or westslope cutthroat trout, populations are viable at the Project level, watershed scale, or on the Helena National Forest, in violation of the NFMA and ESA.

The agencies are not meeting recovery requirements for bull trout/westslope cutthroat trout, in violation of the ESA. Recovery standards, goals and objectives are not being met. The Project fails to contribute to the recovery of bull trout and/or westslope cutthroat trout.

By authorizing this project the Helena N.F. is not facilitating recovery of nor “conserving” bull trout in the project area and is instead either maintaining or further degrading bull trout habitat.

The impact of the intense sedimentation predicted across much of the watershed is significant and substantial on fish populations. Fish suffer many effects from increased sedimentation. These effects range from physiological and behavioral, where gills are injured by the passage of a high volume of abrading sediment and foraging habits altered or interfered with due to changes in visibility in the water, to the actual death of fish. Bull trout are very sensitive to sediment. Their fry and juvenile stages, those that rely on interstitial habitats within the stream gravels for protection from predators and adequate food and oxygen, suffer higher mortality as sediment increases. Westslope cutthroat are also noted to be sensitive to sediment for much the same reasons. Thus, the cold water fishery beneficial use is further damaged and results in a CWA violation.

The FEIS does not model retention, which is key to estimating the impact on fish population health in the creek. In essence, it only models the sediment coming into the stream and ignores the length of time it might continue to degrade water quality and fish habitat. Even so, any increase measurable in tons that is not related to an ultimate reduction in sediment load (as road work is) is a violation of the Clean Water Act by interfering with the attainment of beneficial uses in WQLS streams.

The draft ROD and FEIS authorizes wheeled motorized vehicle travel for dispersed camping or parking within 300 feet of all designated system roads.

The FS is not allowed to undertake activities that increase the risk of extinction for bull trout, a federally listed Threatened species or west slope cutthroat trout a sensitive species. Moreover, bull trout in the project area watershed are at extreme risk of extinction. In combination with heavy past heavy logging, road building, past prescribed burning and past mining, the cumulative effects prohibit a new activity of the scope that would be authorized by the decision memo. The Forest Service and the Fish and Wildlife Service are required by the ESA to recover populations not maintain them at extreme risk of extinction.

The Agency will violate the NEPA by falsely claiming that bull trout in the Project area are not at risk.

The FEIS doesn't show on any maps what streams the units are in or discuss how the local populations are doing. The Forest Service has data on these individual streams but is not sharing it with the public in violation of NEPA, the APA and the ESA.

This area is habitat for bull trout. Please formally consult with the U.S. Fish and Wildlife Service and about the impacts on bull trout and bull trout critical habitat. The biological assessment must be available for the public to comment on before a decision is signed or the project is in violation of NEPA.

The agency has not used the best available science in project analysis.

Please re-initiate a programmatic consultation with the U.S. Fish and Wildlife Service on PACFISH/INFISH in Bull Trout Critical Habitat since critical habitat for bull trout was designated after PACFISH and INFISH were adopted and the impact of these standards on bull trout critical habitat have not been assessed. PACFISH and INFISH were adopted before bull trout were listed so the Forest Service needs to reinitiate a programmatic consultation on PACFISH/INFISH effect on bull trout. Since much of the project area drainage is now designated as bull trout critical habitat, the Forest Service must complete this consultation before project activities can move forward. This consultation must also be available for the public to comment on before a decision for this Project is signed.

The FEIS does not disclose how this project supposed improvements meet INFISH objectives.

According to the USFWS, four elements are necessary to assess long-term viability (extinction risk) of bull trout populations: 1) the number of local populations, 2) adult abundance, 3) productivity (reproductive rate), and 4) connectivity (presence of migratory life history form). The DEIS fails to address any of the above parameters either at the project level or the watershed level. Nor has the agency provided documentation or discussion of the impacts threshold that the local bull trout population can sustain. Please fix this.

The FEIS did not adequately examine the cumulative impacts on bull trout from grazing, it did not demonstrate that it consider the significant grazing impacts in this watershed. A 2013 BiOp for the Mill Creek grazing allotment in the Salmon N.F. admits that cattle will trample up to 16 bull trout redds annually, plus cause significant habitat degradation such as sedimentation. The FEIS did not show that the Forest Service consider this. The is quite meager and in violation of NEPA, NFMA, the Clean water Act, the APA and the ESA. There is an inadequate analysis on the cumulative impacts on streams and bull trout and bull trout critical habitat from motorized use. There is also an inadequate direct and cumulative impacts analysis on bull trout from brook trout. The FEIS did show that the Forest Service considered brook trout expansion. Sedimentation and high temperatures exacerbate brook trout expansion, because brook trout are more tolerant of poor water quality.

There is also an inadequate Cumulative impacts analysis on Bull Trout from all past, present and future HNF timber sales in the watershed in violation of NEPA, NFMA, the APA and the ESA

One of the major contributors to aquatic habitat degradation in the project area is the high road density and this project will build more roads and skid trails. The disclosure of current road density (including total, open, closed) and project and post project densities (including temporary roads needed to facilitate logging activities) is not clear in the EA how sedimentation from haul routes will impact stream quality. Vehicle operations on

roads generate sediment and a wide variety of trace metals and hydrocarbons that contaminate road surfaces.

It does appear clear that nearly all of the sub watersheds are functioning at an unreasonable risk due to road densities. Because road density is such an important factor in habitat quality for aquatic and many terrestrial species, disclosure and analysis of road density percentages before, during, and after project implementation is imperative as well as compliance with the Forest Plan road density standards.

The Forest Service and U.S. Fish and Wildlife Service: 1) failed to take a hard look at Project impacts on bull trout and westslope cutthroat trout, 2) failed to ensure bull trout and westslope cutthroat trout survival and recovery, and 3) failed to ensure a viable population of bull trout and westslope cutthroat trout (WCT), in violation of the Helena National Forest Plan, ESA, NFMA and NEPA. Bull trout is listed as a threatened species under the ESA.

WCT is designated as a Sensitive Species by the U.S. Forest Service (USFS), and a Special Status Species by the Bureau of Land Management (BLM).

Weeds

Native plants are the foundation upon which the ecosystems of the Forest are built, providing forage and shelter for all native wildlife, bird and insect species, supporting the natural processes of the landscape, and providing the context within which the public find recreational and spiritual opportunities. All these uses or values of land are hindered or lost by conversion of native vegetation to invasive and noxious plants. The ecological threats posed by noxious weed infestations are so great that a former chief of the Forest Service called the invasion of noxious weeds “devastating” and a “biological disaster.” Despite implementation of Forest Service “best management practices” (BMPs), noxious weed infestation on the Forest is getting worse and noxious weeds will likely overtake native plant populations if introduced into areas that are not yet infested. The Forest Service has recognized that the effects of noxious weed invasions may be irreversible. Even if weeds are eliminated with herbicide treatment, they may be replaced by other weeds, not by native plant species.

Invasive plant species, also called noxious weeds, are one of the greatest modern threats to biodiversity on earth. Noxious weeds cause harm because they displace native plants, resulting in a loss of diversity and a change in the structure of a plant community. By removing native vegetative cover, invasive plants like knapweed may increase sediment yield and surface runoff in an ecosystem. As well knapweed may alter organic matter distribution and nutrient through a greater ability to uptake phosphorus over some native species in grasslands. Weed colonization can alter fire behavior by increasing flammability: for example, cheatgrass, a widespread noxious weed on the Forest, cures early and leads to more frequent burning. Weed colonization can also deplete soil nutrients and change the physical structure of soils.

The Forest Service’s own management activities are largely responsible for noxious weed infestations; in particular, logging, prescribed burns, and road construction and use create a risk of weed infestations. The introduction of logging equipment into the Forest creates and exacerbates noxious weed infestations. The removal of trees through logging can also facilitate the establishment of noxious weed infestations because of soil disturbance and the reduction of

canopy closure. In general, noxious weeds occur in old clearcuts and forest openings, but are rare in mature and old growth forests. Roads are often the first place new invader weeds are introduced. Vehicle traffic and soil disturbances from road construction and maintenance create ideal establishment conditions for weeds. Roads also provide obvious dispersal corridors. Roadsides throughout the project area are infested with noxious weeds. Once established along roadsides, invasive plants will likely spread into adjacent grasslands and forest openings.

The FEIS and Draft ROD did not address the ecological, social and ascetic impact of current noxious weed infestations within the project area. Include an analysis of the impact of the actions proposed by this project on the long and short term spread of current and new noxious weed infestations. What treatment methods will be used to address growing noxious weed problems? What noxious weeds are currently and historically found within the project area? Please include a map of current noxious weed infestations which includes knapweed, Saint Johnswort, cheat grass, bull thistle, Canada thistle, hawkweed, hound's-tongue, oxeye daisy and all other Category 1, Category 2 and Category 3 weeds classified as noxious in the MONTANA COUNTY NOXIOUS WEED LIST. State-listed Category 2 noxious weed species yellow and orange hawkweeds are recently established (within the last 5 to 10 years) in Montana and are rapidly expanding in established areas. They can invade undisturbed areas where native plant communities are intact. These species can persist in shaded conditions and often grow underneath shrubs making eradication very difficult. Their stoloniferous (growing at the surface or below ground) habit can create dense mats that can persist and spread to densities of 3500 plants per square mile (Thomas and Dale 1975). The FEIS does not adequately address the issue of weeds in violation of NFMA and NEPA and the Forest Plan.

The FEIS and draft ROD does not address the cumulative, direct and indirect effects of the proposed project on weed introduction, spread and persistence that includes how weed infestations have been and will be influenced by the following management actions: road construction including new permanent and temporary roads, and skid trails proposed within this project area; opening and decommissioning of roads represented on forest service maps; ground disturbance and traffic on forest service template roads, mining access routes, and private roads; removal of trees through commercial and pre-commercial logging and understory thinning; and prescribed burns. The FEIS does not adequately discuss what open, gated, and decommissioned Forest Service roads within the project area proposed as future haul routes or motorized use have existent noxious weed populations and what methods will be used to assure that noxious weeds are not spread into the proposed action units.

Noxious weeds are not eradicated with single herbicide treatments. A onetime application may kill an individual plant but dormant seeds in the ground can still sprout after herbicide treatment. Thus, herbicides must be used on consistent, repetitive schedules to be effective.

The EA does not commitment to a long-term, consistent strategy of application is being proposed for each weed infested area within the proposed action area in violation of NEPA and NFMA.

The EA does not discuss what long term monitoring of weed populations is proposed.

When areas treated with herbicides are reseeded on national forest land, they are usually reseeded with exotic grasses, not native plant species. The EA does not discuss what native plant restoration activities will be implemented in areas disturbed by the actions proposed in this

project. The EA adequately discuss howl disturbed areas including road corridors, skid trails, and burn units be planted or reseeded with native plant species.

The scientific and managerial consensus is that prevention is the most effective way to manage noxious weeds. The Forest Service concedes that preventing the introduction of weeds into uninfested areas is “the most critical component of a weed management program.” The Forest Service’s national management strategy for noxious weeds also recommends “develop[ing] and implement[ing] forest plan standards . . .” and recognizes that the cheapest and most effective solution is prevention. The EA does not adequately discuss which units within the project area currently have no noxious weed populations within their boundaries or what minimum standards are in the Helena National Forest Plan to address noxious weed infestations. The Blackfoot Travel Plan Draft ROD did not include an alternative in that includes land management standards that will prevent new weed infestations by addressing the causes of weed infestation. The failure to include preventive standards violates NFMA, APA and MUSY because the Forest Service is not ensuring the protection of soils and native plant communities. Additionally, the omission of an alternative that includes preventive measures would violate NEPA because the Forest Service failed to consider a reasonable alternative.

Rare Plants

The ESA requires that the Forest Service conserve endangered and threatened species of plants as well as animals. In addition to plants protected under the ESA, the Forest Service identifies species for which population viability is a concern as “sensitive species” designated by the Regional Forester (FSM 2670.44). The response of each of the sensitive plant species to management activity varies by species, and in some cases, is not fully known. Local native vegetation has evolved with and is adapted to the climate, soils, and natural processes such as fire, insect and disease infestations, and windthrow. Any management or lack of management that causes these natural processes to be altered may have impacts on native vegetation, including threatened and sensitive plants. Herbicide application – intended to eradicate invasive plants – also results in a loss of native plant diversity because herbicides kill native plants as well as invasive plants. Although native species have evolved and adapted to natural disturbance such as fire on the landscape, fires primarily occur in mid to late summer season, when annual plants have flowered and set seed. Following fall fires, perennial root-stocks remain underground and plants emerge in the spring. Spring and early summer burns could negatively impact emerging vegetation and destroy annual plant seed.

The FEIS does not adequately examine what threatened, endangered, rare and sensitive plant species and habitat are located within the proposed project area in violation of the ESA, NEPA, the APA and NFMA. The standards used to protect threatened, rare, sensitive and culturally important plant species and their habitats from the management actions proposed in this project are inadequate.

Management Standard C-2(2) and C-2(13) requires the Forest Service to conduct biological evaluations for T&E species and assess potential for suitable habitat prior to surface disturbing activities. The FS did not conduct biological evaluations for all sensitive and T&E plant species and is therefore in violation of the Forest Plan.

Failing to survey or Threatened, Endangered, and Sensitive plants also violates NEPA. 40 C.F.R. § 1502.15 requires the agency to gather baseline information and address direct impacts:

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

NEPA clearly requires that consideration of environmental impacts of proposed projects take place before a final decision is made. [LaFlamme v. FERC, 842 F.2d 1063, 1071 \(9th Cir.1988\)](#) (emphasis in original). Without establishing the baseline conditions which exist in the vicinity of the project before it begins, there is simply no way to determine what effect the proposed project will have on the environment and, consequently, no way to comply with NEPA. Half Moon Bay Fishermans' Marketing Ass'n, 857 F.2d at 510. An EA may be found inadequate under NEPA if it does not reasonably [set] forth sufficient information to enable the decisionmaker to consider the environmental factors and make a reasoned decision. Id. at 508, citing [Oregon Environmental Council v. Kunzman, 817 F.2d 484, 493 \(9th Cir.1987\)](#).

LYNX

The Endangered Species Act requires the FS to insure that the Blackfoot Travel Plan project is not likely to result in the destruction or adverse modification of critical habitat. 16 U.S.C. §1536(a)(2). Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for lynx. 74 Fed. Reg. 8644. The Forest Service must comply with the Northern Rockies Lynx Management Direction (NRLMD).

Because of instructions in the Northern Rockies Lynx Management Direction appeal decision the Forest Service is required to consult with the United States Fish and Wildlife Service (USFWS). The Forest Service did not consult with the USFWS regarding lynx, which is a violation of the Endangered Species Act.

The NRLMD as applied in the Blackfoot Travel Plan project violates the ESA by failing to use the best available science to insure no adverse modification of critical habitat. The Forest Service must consult on the NRLMD in lynx critical habitat before this project can be approved. The NRLMD carves out exemptions from Veg Standards S1, S2, S5, and S6. In particular, fuel treatment projects may occur in the WUI even though they will not meet standards Veg S1, S2, S5, or S6, provided they do not occur on more than 6% of lynx habitat on each National Forest. See NRLMD ROD, Attachment 1, pages 2-3. Allowing the agency to destroy or adversely modify any lynx critical habitat has the potential to appreciably reduce the conservation value of such habitat. The agency cannot simply set a cap at 6% forest-wide without looking at the individual characteristics of each LAU to determine whether the project has the potential to appreciably reduce the conservation value. The ESA requires the use of the best available science at the site-specific level. It does not allow the agencies to make a gross determination that allowing 6% of lynx critical habitat to be destroyed forest-wide will not appreciably reduce the conservation value.

The FS also states that the project will result in disturbance to lynx in the project area and that lynx will move to an undisturbed area of the home range during project implementation.

In December 1999, the Forest Service and Bureau of Land Management completed their “Biological Assessment Of The Effects Of National Forest Land And Resource Management Plans And Bureau Of Land Management Land Use Plans On Canada Lynx” (Programmatic Lynx BA). The Programmatic Lynx BA concluded that the current programmatic land management plans “may affect, and are likely to adversely affect, the subject population of Canada lynx.” The Lynx BA team recommended amending or revising Forest Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects on lynx. The Programmatic Lynx BA’s determination means that Forest Plan implementation is a “taking” of lynx, and makes Section 7 formal consultation on the HNF Plan mandatory, before actions such as the proposed project are approved.

Continued implementation of the Forest Plan constitutes a “taking” of the lynx. Such taking can only be authorized with an incidental take statement, issued as part of a Biological Opinion (B.O.) during of Section 7 consultation. The HNF must incorporate terms and conditions from a programmatic B.O. into a Forest Plan amendment or revision before projects affecting lynx habitat, such as this one, can be authorized.

The Programmatic Lynx BA’s “likely to adversely affect” conclusion was based upon the following rationale. Plans within the Northern Rockies:

- generally direct an aggressive fire suppression strategy within developmental land allocations. ...this strategy may be contributing to a risk of adversely affecting the lynx by limiting the availability of foraging habitat within these areas.
- allow levels of human access via forest roads that may present a risk of incidental trapping or shooting of lynx or access by other competing carnivores. The risk of road-related adverse effects is primarily a winter season issue.
- are weak in providing guidance for new or existing recreation developments. Therefore, these activities may contribute to a risk of adverse effects to lynx.
- allow both mechanized and non-mechanized recreation that may contribute to a risk of adverse effects to lynx. The potential effects occur by allowing compacted snow trails and plowed roads which may facilitate the movements of lynx competitors and predators.
- provide weak direction for maintaining habitat connectivity within naturally or artificially fragmented landscapes. Plans within all geographic areas lack direction for coordinating construction of highways and other movement barriers with other responsible agencies. These factors may be contributing to a risk of adverse effects to lynx.
- are weak in providing direction for coordinating management activities with adjacent landowners and other agencies to assure consistent management of lynx habitat across the landscape. This may contribute to a risk of adverse effects to lynx.
- fail to provide direction for monitoring of lynx, snowshoe hares, and their habitats. While failure to monitor does not directly result in adverse effects, it makes the detection and assessment of adverse effects from other management activities difficult or impossible to attain.
- forest management has resulted in a reduction of the area in which natural ecological processes were historically allowed to operate, thereby increasing the area potentially affected by known risk factors to lynx. The Plans have continued this trend. The Plans have also continued the process of fragmenting habitat and reducing its quality and quantity. Consequently, plans may risk adversely affecting lynx by potentially contributing to a reduction in the geographic range of the species.
- The BA team recommends amending or revising the Plans to incorporate conservation measures that would reduce or eliminate the identified adverse effects to lynx. The

programmatic conservation measures listed in the Canada Lynx Conservation Assessment and Strategy (LCAS) should be considered in this regard, once finalized.
(Programmatic Lynx BA, at 4.)

The Programmatic Lynx BA notes that the LCAS identifies the following risk factors to lynx in this geographic area:

- Timber harvest and precommercial thinning that reduce denning or foraging habitat or converts habitat to less desirable tree species
- Fire exclusion that changes the vegetation mosaic maintained by natural disturbance processes
- Grazing by domestic livestock that reduces forage for lynx prey
- Roads and winter recreation trails that facilitate access to historical lynx habitat by competitors
- Legal (in Montana) and incidental trapping and shooting
- Predation
- Being hit by vehicles
- Obstructions to lynx movements such as highways and private land development

As evidenced by the fact that the Canada lynx is now listed under the Endangered Species Act and has potential critical habitat in the project area, it is clear that the HNF must do more than follow its Forest Plan's weak protections provided for lynx. The NEPA analysis does not demonstrate that the project and its analysis are consistent with all Standards contained in the Lynx Conservation and Assessment Strategy (LCAS) for lynx critical habitat. This is a violation of NFMA and the ESA.

The NEPA analysis does not adequately address the effects of logging on landscape pattern, which is essential for protection of critical habitat. The LCAS require that the FS:

Maintain suitable acres and juxtaposition of lynx habitat through time. Design vegetation treatments to approximate historical landscape patterns and disturbance processes.

If the landscape has been fragmented by past management activities that reduced the quality of lynx habitat, adjust management practices to produce forest composition, structure, and patterns more similar to those that would have occurred under historical disturbance regimes.

The LCAS sets mandatory Standards that would modify or amend the Forest Plan—steps the HNF has thus far not accomplished. Important Programmatic Standards include:

Identify key linkage areas that may be important in providing landscape connectivity within and between geographic areas, across all ownerships. (LCAS at 89.)

Develop and implement a plan to protect key linkage areas on federal lands from activities that would create barriers to movement. Barriers could result from an accumulation of incremental projects, as opposed to any one project. (Id.)

Map and monitor the location and intensity of snow compacting activities that coincide with lynx habitat, to facilitate future evaluation of effects on lynx as information becomes available. (LCAS at 83.)

On federal lands in lynx habitat, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas by LAU.

Among the standards set out in the LCAS are provisions to maintain denning habitat as discussed in the programmatic lynx BO:

Denning Habitat - Within developmental land allocations, existing Plan direction to maintain old growth habitat was judged to be adequate to provide for lynx denning habitat for all geographic areas except the Great Lakes. (BO at 31.)

However, the HNF cannot meet lynx denning requirements unless it is meeting Forest Plan old-growth requirements. The Programmatic BA's analysis of the ability of the Forest Plans, as "amended" by the LCAS, to prevent a "taking" of the lynx is based upon the Forests' meeting such management standards. As the HNF has not yet proved it is in compliance with old-growth species' viability standards or adequately dealing with forest wide old-growth declines, the project may not be in compliance with the LCAS.

The impacts of both winter and non-winter motorized route densities must be adequately considered. The LCAS states, "the effects of open road densities on lynx are poorly understood" (LCAS at 95).

It is not clear that the HNF has a complete understanding of the current level of use of the project area for snowmobiles and other motorized recreational users. Please analyze the cumulative impacts on lynx from the additional new roads, additional skid trails, and other logging access routes to be constructed in the project area—roads/access routes that could be used by snowmobilers snowmobiles and other motorized recreational users, snowshoers, and cross country skiers long after the logging activities have stopped. These roads/access routes can also impact lynx habitat during all seasons because of increased access for humans.

From Ruggiero, et al. (1999: "Lynx metapopulation dynamics operate at regional scales" (p. 24). There must be maps and adequate discussion of the connectivity issue in the DN, making it possible to see the landscape features that affect connectivity and metapopulation dynamics within and between LAUs both within and outside the project area, a goal of the LCAS mapping requirement.

The very existence of roads and compacted travel routes from motorized vehicles in snow adversely affect lynx because of the advantage provided for other predators that normally wouldn't be in portions of the project area in winter.

Grizzly Bears

Closed and/or barriered roads must be included in the Total Linear Road Mileage calculation to make sure the Helena N.F. is complying with grizzly bear protection standards (NCDE Access Management Guidelines, (19/19/68) for grizzly bear security and habitat within the recovery zone.

Wolverine

The wolverine was recently determined to be warranted for listing under the ESA. 75 Fed. Reg. 78030 (Dec. 14, 2010). It is currently a candidate species, waiting for work to be completed on other species before it is officially listed. The USFWS found that “[s]ources of human disturbance to wolverines include . . . road corridors and extractive industry such as logging . . .” The Forest Service admits that the wolverine and/or its habitat are present within the project area and would be impacted by the project. The ESA, APA, NFMA and NEPA require that the Forest Service must go through ESA consultation for the wolverine for this project.

Attached is the Forest Service's Region 1 guidance to its wildlife biologists regarding wolverine. It directs them not to analyze wolverine in a biological assessment and not to send their analyses to the U.S. Fish & Wildlife Service.

This is illegal because the ESA regulations require that proposed species be addressed in a biological assessment to reach a jeopardy/no jeopardy conclusion, and then the Forest Service must give the biological assessment to FWS for their concurrence.

Following is the legal citation that the Forest Service is violating:

Submission of biological assessment. The Federal agency shall submit the completed biological assessment to the Director for review. The Director will respond in writing within 30 days as to whether or not he concurs with the findings of the biological assessment.

...

Use of the biological assessment. (1) The Federal agency shall use the biological assessment in determining whether formal consultation or a conference is required If the biological assessment indicates that the action is not likely to jeopardize the continued existence of proposed species . . . and the Director concurs, then a conference is not required.

50 C.F.R. §§402.12 (j),(k)(emphases added).

CLEAN WATER ACT

The Blackfoot Travel Plan decision should wait until a TMDL is completed for all streams in the project area as required by the Clean Water.

The Clean Water Act requires that federal agencies comply with its provisions. The agency must protect water quality and comply with state water quality standards on National Forest system lands. *Marble Mountain Audubon Soc. v. Rice*, 914 F.2d 179, 182 (9th Cir. 1990); *Oregon Natural Resources Council v. U.S. Forest Service*, 834 F.2d 842, 848 (9th Cir. 1987); *Northwest Indian Cemetery Protective Ass’n v. Peterson*, 794 F.2d 688, 697 (9th Cir. 1987); 33 U.S.C. 1323(a) (“Each department, agency, or instrumentality of the executive [branch] . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution”); 16 U.S.C. 1604(g)(3)(E)(iii) (timber may be harvested only where “protection is provided for streams, streambanks shorelines, lakes, wetlands, and other bodies of water from detrimental changes in water temperatures, blockages of water courses, and deposits of sediment”); 36 C.F.R. 219.23(d) (“Forest Planning shall provide for -- Compliance with requirements of the Clean Water Act, the Safe Drinking Water Act, and all substantive and procedural requirements of

Federal, State and local governmental bodies”) and 36 C.F.R. 219.27(a)(4) (“All management prescriptions shall . . . Protect streams, streambanks, shorelines, lakes, wetlands and other bodies of water”).

Section 303(d) of the CWA (33 USC §1313(d)) requires that states list water quality limited segments of bodies of water within its jurisdiction. The listed segments are not meeting state water quality standards or failing to meet designated uses due to identified reasons. The states are required to develop Total Maximum Daily Loads (TMDL) for these waters (33 USC Sec 1313 (d)(1)(c)). TMDLs are designed to address all sources of pollution limiting the water quality of the public waters and should include point and non-point sources of pollution, such as sediment generated from logging activities. In the absence of a TMDL federal agencies have a duty to avoid further degradation of WQLS stream segments. The Blackfoot Travel Project violates this duty and thereby violates the CWA.

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